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**MAR 31 1997**

Federal Communications Commission  
Office of Secretary

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March 31, 1997

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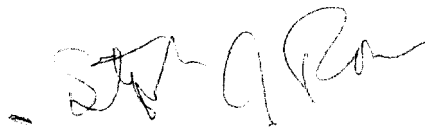
Ms. Gloria Shambley  
Common Carrier Bureau  
Network Services Division  
2000 M St., N.W., Room 235  
Washington, D.C. 20554

Re: PCIA Comments In CC Docket No. 92-105

Dear Ms. Shambley:

Please find enclosed, on behalf of the Personal Communications Industry Association ("PCIA"), a diskette containing PCIA's opening round comments in CC Docket No. 92-105, *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*. If you have any questions about this submission, please contact me at (202) 828-3271. Thank you.

Respectfully submitted,



Stephen J. Rosen

Enclosure: Diskette with PCIA Comments

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAR 31 1997

Federal Communications Commission  
Office of Secretary

In the Matter of )

The Use of N11 Codes and Other )

Abbreviated Dialing Arrangements )

CC Docket No. 92-105

COMMENTS OF  
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA"),<sup>1</sup> by its attorneys,  
respectfully submits its comments on the Further Notice of Proposed Rulemaking in the above-  
captioned docket.<sup>2</sup>

I. INTRODUCTION AND SUMMARY

On February 19, 1997, the Commission issued a *Report and Order* and a *Further Notice of Proposed Rulemaking* regarding the use of N11 codes. In the *Report and Order*, the Commission took the following actions: (1) it allowed Bellcore, the incumbent local exchange

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<sup>1</sup> PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

<sup>2</sup> FCC 97-51 (Feb. 19, 1997) ("*Report and Order*" and "*Further Notice*").

carriers ("ILECs"), and state commissions to continue to administer N11 codes until further Commission action; (2) it assigned 311 as a nationwide means of reaching non-emergency police services; (3) it stated that all providers of telephone exchange service must be allowed access to the 611 and 811 codes so their customers can reach the repair and business offices, respectively; (4) it forbade a LEC from offering enhanced services on an N11 code unless the LEC offered competing enhanced service providers non-discriminatory access to that N11 code; and (5) it assigned 711 on a nationwide basis for telecommunications relay service ("TRS").<sup>3</sup> In the *Further Notice*, the Commission sought comment on a number of issues related to N11 codes, including whether the Commission has the statutory authority to sell the right to use N11 codes,<sup>4</sup> and whether the administration of N11 codes should be transferred from ILECs to a neutral administrator that will be designated by the North American Numbering Council ("NANC").<sup>5</sup>

PCIA believes that whatever actions the Commission takes regarding N11 codes must be within the Commission's statutory authority and competitively neutral. Thus, the Commission, like any other administrative agency, cannot engage in activities that are beyond its statutory mandate. The Commission lacks the legal authority to sell N11 codes, and thus cannot do so.

PCIA supports implementation of the Commission's proposal to transfer the administration of N11 codes from incumbent local exchange carriers to a neutral entity. Such a

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<sup>3</sup> *Report and Order*, ¶ 2.

<sup>4</sup> *Further Notice*, ¶ 71.

<sup>5</sup> *Id.*, ¶ 75.

transfer of power will ensure that numbering resources are assigned fairly and impartially, thereby helping to foster full and effective competition in the telecommunications industry.<sup>6</sup>

## II. ABSENT EXPRESS STATUTORY AUTHORIZATION, THE COMMISSION LACKS THE AUTHORITY TO SELL N11 NUMBERS

In its *Further Notice*, the Commission seeks comment on its "statutory authority to sell the right to use N11 codes."<sup>7</sup> PCIA believes that, absent express statutory authorization, the Commission is not empowered to sell any national resources — including telephone numbers.

As a matter of law, it is well-settled that administrative agencies can exert no more power than Congress has granted them.<sup>8</sup> Thus, agency actions are constrained by the agency's enabling statute — which, in the case of the FCC, provides extremely limited authority to sell federal property. Specifically, the Commission's auction authority is found *solely* in Section 309(j) of the Communications Act, which states in pertinent part:

If mutually exclusive applications are accepted for filing for any initial license or construction permit which will involve the *use of the electromagnetic spectrum* ... then the Commission shall have the authority ... to grant such license or permit ... through the use of a system of *competitive bidding* ....<sup>9</sup>

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<sup>6</sup> PCIA currently is developing information to address the issue of whether broadband commercial mobile radio service providers have the technical ability to use 711 as a means of accessing telecommunications relay services, and thus will comment on this issue in the reply round. See *Further Notice*, ¶ 67.

<sup>7</sup> *Further Notice*, ¶ 71.

<sup>8</sup> See *Zola v. ICC*, 889 F.2d 508, 515 (3rd Cir. 1989), *cert. denied*, 495 U.S. 947 (1990) (citing *Arrow-Hart & Hegeman Electric Co. v. FTC*, 291 U.S. 587, 598 (1934) ("The [Federal Trade] Commission is an administrative body possessing only such powers which are granted by statute")).

<sup>9</sup> 47 U.S.C. § 309(j)(1) (emphasis added).

No other portions of the Communications Act grant the Commission auction authority. Thus, because telephone numbers are obviously not part of the electromagnetic spectrum, the Commission has no statutory authority to auction them.

In the past, the Commission itself has recognized this statutory limitation in the context of auctions for toll-free numbers.<sup>10</sup> Similarly, the President and Congress have made it clear that the Commission must be granted additional authority before it can auction toll-free numbers.<sup>11</sup> There is no principled distinction between the need for explicit authority to auction toll-free numbers and the need for such authority to auction N11 codes. Therefore, until the President and Congress empower the Commission to sell N11 codes, it cannot do so.

### **III. IT IS IMPERATIVE THAT N11 NUMBERS BE ADMINISTERED BY A NEUTRAL ENTITY**

PCIA endorses the Commission's proposal to transfer the administration of N11 codes "from the incumbent LECs to the neutral NANP administrator to be recommended by the NANC."<sup>12</sup> This issue is of particular importance to PCIA's members, which, as wireless carriers, must often compete with incumbent local exchange carriers for customers.

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<sup>10</sup> See "Chong Proposes 3-Stage 'Road Map' To Diminished Telecom Regulation," *Communications Daily* (Dec. 15, 1995) (Common Carrier Bureau Chief Regina Keeney stating that the FCC does not currently have authority to auction toll-free numbers).

<sup>11</sup> See "Three Bills Eye More Auctions," *FCC Report* (May 22, 1996) (stating that the Clinton administration intended to pass a budget bill under which "the government [would] earn \$700 million over a five year period by auctioning new toll-free numbers," while a number of members of Congress opposed the bill).

<sup>12</sup> *Further Notice*, ¶ 75.

Preliminarily, if incumbent carriers are allowed better access to numbering resources than are other carriers, incumbents will have an unfair competitive advantage, contrary to the pro-competitive goals of the 1996 Act. Non-discriminatory access to telephone numbers has become particularly important as wireline and wireless providers offer "one-stop shopping" for fixed and mobile services, new area codes are rolled out with increasing rapidity, and what was once a closed market is becoming characterized by vigorous competition.

Moreover, the transfer of power to a neutral entity is consistent with Section 251 and the Commission's order regarding the administration of the North American Numbering Plan. As a matter of statutory background, Section 251(e)(1) requires the Commission to "create or designate one or more *impartial* entities to administer telecommunications numbering, and to make such numbers available on an *equitable* basis."<sup>13</sup> Similarly, in its Report and Order entitled "Administration of the North American Numbering Plan," the Commission stated that one of its policy objectives for numbering is that "[a]dministration of the NANP should not unduly favor or disadvantage any particular industry segment or group of consumers."<sup>14</sup>

Placing the administration of N11 codes in the hands of a neutral administrator is consistent with all of the aforementioned principles of equal and fair access to numbering resources. N11 codes, like all numbering resources, are valuable commodities to any member of the telecommunications industry. Given this fact, either self-dealing or the *appearance* of some form of self-dealing by any administrator that also uses numbering resources in its business is

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<sup>13</sup> 47 U.S.C. § 251(e)(1) (emphasis added).

<sup>14</sup> *Administration of the North American Numbering Plan*, 11 FCC Rcd 2588, ¶ 15 (1995).


virtually inevitable. In order to avoid the contentiousness and litigation that such a situation would create, PCIA strongly endorses the Commission's proposal to assign the administration of N11 codes to a neutral administrator.

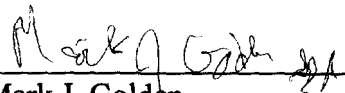
#### **IV. CONCLUSION**

The Commission cannot — consistent with the Communications Act — sell N11 numbers. In addition, the Commission should ensure that access to N11 numbers is controlled by a neutral administrator rather than an entity that uses numbers for its own business purposes, and should adopt rules designed to accomplish this result.

Respectfully submitted,

**PERSONAL COMMUNICATIONS  
INDUSTRY ASSOCIATION**

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March 31, 1997